IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4681 of 2007()

[CRIME NO.274/2002 OF NEYYARDAM POLICE STATION]

PETITIONER/ACCUSED

MANU SEBASTIAN, S/O.SEBASTIAN,
KOLATHU VEEDU, KOVILOOR DESOM,
AMBURI VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.D.KISHORE

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
NEYYARDAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4681 of 2007

Dated this the 2nd day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 427 I.P.C and Section 3(1) of P.D.P.P Act. Investigation is complete. Final report has already been filed. The petitioner was not available for arrest. Non-bailable warrant is being issued against the petitioner. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His failure/omission to appear before the learned Magistrate was not wilful; but was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and apply for bail. He shall co-operate with the court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

2. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I find absolutely no reason to invoke the powers under Section 438/482 Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer having jurisdiction and seek regular bail in the normal and ordinary course.

3. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate having jurisdiction and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007